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January 31, 2013

## VIA E-FILING

Cynthia T. Brown, Chief  
Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington DC 20423-0001

Re: *Norfolk Southern Railway Company – Abandonment Exemption – In  
Marietta, Lancaster County, PA,*  
STB Docket No. AB-290 (Sub-No. 328X)

Dear Ms. Brown:

On January 28, 2013, Norfolk Southern Railway Company (“NSR”) filed a letter requesting a one-year extension of its abandonment authority in the above-referenced proceeding. The extension request was predicated upon the mistaken understanding that the subject extension request should be measured from the *effective date* of the notice – February 1, 2012 – rather than the *notice publication date*. NSR has since ascertained that, based on the Board-issued notice served December 30, 2011, NSR should have submitted its extension request a few weeks ago pursuant to 49 C.F.R. § 1152.29(e)(2). NSR regrets the misunderstanding and acknowledges the mistake, but it respectfully urges the Board to waive the section 1152.29(e)(2) requirement as appropriate, and accept and grant NSR’s extension request.

NSR’s misstep was influenced by contributing factors. First, the NSR employee to whom internal abandonment case management was assigned during the course of the subject proceeding was recently promoted to another department, and is transitioning away from the handling of rail line abandonment and discontinuance matters. This personnel transition, which, incidentally, overlapped the recently-concluded holiday season, contributed to the ministerial oversight. Second, the Board issued a decision in this proceeding on January 31, 2012 (imposing

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what NSR understands to be preconditions to salvage activities only) that appears to have fueled NSR's misunderstanding about the notice filing deadline.<sup>1</sup>

In closing, NSR acknowledges that the STB-issued notice of an exempt abandonment issued in this proceeding on December 30, 2011, prescribed the correct consummation notice deadline, and that NSR's extension request therefore should have been filed at least a few weeks sooner than it was. In becoming aware of the mistake, however, NSR understands that, in the presence of adequate justification, the Board may waive the section 1152.29(e)(2) notice requirement, and that it may be willing to do so here in granting the requested extension. NSR submits that it has offered explanations for the oversight that, while perhaps not excusing it completely,<sup>2</sup> nevertheless would allow the Board to forgive it as an honest mistake, particularly in light of the brief interval between the actual December 30, 2012 deadline and the date of the extension request letter.

Please let me know if I can be of any further assistance in this matter or if you have any questions concerning the foregoing waiver request.

Sincerely,



Robert A. Wimbish  
Attorney for Norfolk Southern  
Railway Company

cc: Maquiling Parkerson, Marc Kirchner

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<sup>1</sup> The January 28 extension request, for example, states that the Board's January 31, 2012 decision provided that the subject notice of consummation was due on February 1, 2013. The Board's January 31, 2012 decision does not so state. Rather, it indicates only that the exemption "is scheduled to become effective on February 1, 2012," and makes no mention of the consummation notice deadline. The extension letter does, however, reinforce the fact that NSR's internal docket management in this case mistook the exemption's effective date as the critical date for purposes of section 1152.29(e)(2), as discussed above.

<sup>2</sup> Although perhaps not central to the Board's consideration of the matter, NSR submits that no interested party would be prejudiced or otherwise harmed by Board acceptance and action upon the January 28 extension request at this time.